

## Pension Benefit Guaranty Corporation

## § 4007.8

under (4007.10(c) (dealing with providing record information in connection with a premium compliance review).)

[71 FR 31081, June 1, 2006]

### § 4007.4 Where to file.

See § 4000.4 of this chapter for information on where to file.

[71 FR 31081, June 1, 2006]

### § 4007.6 Computation of time.

The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part. However, for purposes of determining the amount of a late payment interest charge under § 4007.7 or of a late payment penalty charge under § 4007.8, the rule in § 4000.43(a) of this chapter governing periods ending on weekends or Federal holidays does not apply.

[68 FR 61352, Oct. 28, 2003]

### § 4007.7 Late payment interest charges.

(a) If any premium payment due under this part is not paid by the due date prescribed for such payment by § 4007.11, an interest charge will accrue on the unpaid amount at the rate imposed under section 6601(a) of the Code for the period from the date payment is due to the date payment is made. Late payment interest charges are compounded daily.

(b) When PBGC issues a bill for premium payments necessary to reconcile the premiums paid with the actual premium due, interest will be accrued on the unpaid premium until the date of the bill if paid no later than 30 days after the date of such bill. If the bill is not paid within the 30-day period following the date of such bill, interest will continue to accrue throughout such 30-day period and thereafter, until the date paid.

(c) PBGC bills for interest assessed under this section will be deemed paid when due if paid no later than 30 days after the date of such bills. Otherwise, interest will accrue in accordance with paragraph (a) of this section on the amount of the bill from the date of the bill until the date of payment.

### § 4007.8 Late payment penalty charges.

(a) *Penalty charge.* If any premium payment due under this part is not paid by the due date under § 4007.11, the PBGC will assess a late payment penalty charge as determined under this paragraph (a), except to the extent the charge is waived under paragraphs (b) through (g) of this section. The charge will be no more than 100% of the unpaid premium. The charge will be based on the number of months (counting any portion of a month as a whole month) from the due date to the date of payment and is subject to a floor of \$25 (or, if less, the amount of the unpaid premium).

(1) *Penalty rate for post-1995 premium payment years.* This paragraph (a)(1) applies to the premium for any premium payment year beginning after 1995. The penalty rate is—

(i) 1% per month (for all months) on any amount of unpaid premium that is paid on or before the date the PBGC issues a written notice to any person liable for the plan's premium that there is or may be a premium delinquency (e.g., a premium bill, a letter initiating a premium compliance review, or a letter questioning a failure to make a premium filing); or

(ii) 5% per month (for all months) on any amount of unpaid premium that is paid after that date.

(2) *Penalty rate for pre-1996 premium payment years.* This paragraph (a)(2) applies to the premium for any premium payment year beginning before 1996. The penalty rate is 5% per month (for all months) on any amount of unpaid premium.

(b) *Hardship waiver.* The PBGC may grant a waiver based upon a showing of substantial hardship as provided in section 4007(b) of ERISA.

(c) *Reasonable cause waiver.* The PBGC may, upon any demonstration of reasonable cause, waive all or part of a late payment penalty charge.

(d) *Waiver on PBGC's own initiative.* The PBGC may, on its own initiative, waive all or part of a late payment penalty charge.

(e) *Grace period.* With respect to any PBGC bill for a premium underpayment, the PBGC will waive any late payment penalty charge accruing after

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the date of the bill, provided the premium underpayment is paid within 30 days after the date of the bill.

(f) *Safe-harbor relief for certain large plans.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if fewer than 500 participants are reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(g) *Safe-harbor relief for plans that make minimum estimated payment.* This waiver applies in the case of a plan for which a reconciliation filing is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i), the plan administrator pays at least the lesser of—

(1) 90% of the flat-rate premium due for the premium payment year; or

(2) 100% of the flat-rate premium that would be due for the premium payment year if the number of participants for that year were the lesser of—

(i) The number of participants for whom premiums were required to be paid for the plan year preceding the premium payment year; or

(ii) The number of participants reported for the plan year preceding the premium payment year (determined in accordance with paragraph (h) of this section).

(h) *Reported participant count.* For purposes of paragraphs (f) and (g)(2)(ii) of this section, the number of participants reported for the plan year preceding the premium payment year is the number of participants last reported under this part to the PBGC (for the plan year preceding the premium payment year) by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i).

(i) *Safe harbor relief for certain plan amendments prospectively changing plan year.* This waiver applies in the case of a plan for which a reconciliation filing

is required under § 4007.11(a)(2)(iii). The PBGC will waive the penalty on any underpayment of the flat-rate premium for the period that ends on the date the reconciliation filing is due if, by the date the flat-rate premium for the premium payment year is due under § 4007.11(a)(2)(i),—

(1) The plan has been amended to change its plan year and the amendment as in effect on that date makes the premium payment year a short year that will end after that date; and

(2) The plan administrator pays at least the lesser of—

(i) The amount determined under § 4007.8(g) based on the actual length of the premium payment year, or

(ii) The amount determined under § 4007.8(g) based on the length that the premium payment year would have if the new plan year cycle began as anticipated by the amendment.

[64 FR 66385, Nov. 26, 1999, as amended at 65 FR 75164, Dec. 1, 2000]

### § 4007.9 Coverage for guaranteed basic benefits.

(a) The failure by a plan administrator to pay the premiums due under this part will not result in that plan's loss of coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA.

(b) The payment of the premiums imposed by this part will not result in coverage for basic benefits guaranteed under section 4022(a) or 4022A(a) of ERISA for plans not covered under title IV of ERISA.

### § 4007.10 Recordkeeping; audits; disclosure of information.

(a) *Retention of records to support premium payments—(1) In general.* All plan records, including calculations and other data prepared by an enrolled actuary or, for a plan described in section 412(i) of the Code, by the insurer from which the insurance contracts are purchased, that are necessary to support or to validate premium payments under this part shall be retained by the plan administrator for a period of six years after the premium due date. Records that must be retained pursuant to this paragraph include, but are not limited to, records that establish the number of plan participants and